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IN THE

Supreme Court of the United States

October Term, 1960

No. 516

RIDGWAY NATIONAL BANK, BRUCE ISAACSON and JOHN BELL,
Successor Trustees under the Will of N. T. Arnold,
Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,
Appellee.

APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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Argument

Appellee assigns two reasons to support its motion to dismiss the Appeal: First, that the Appeal does not present a substantial Federal question; Second, that the judgment rests on an adequate non-Federal basis.

Substantial Federal Question

Appellee argues that the Appeal does not present a substantial Federal question because the issue simply involves a question of title to land, which question is exclusively within the province of the State Court.

Under the circumstances in this case, this argument begs the question. For, if Appellants do not have title, it was lost by an involuntary conveyance. The question is whether the circumstances surrounding the involuntary sale constituted due process of law. This is a Federal question which should be reviewed by your Honorable Court.

The Supreme Court of Pennsylvania held that title to the gas vested in the Commonwealth of Pennsylvania by successive conveyances back to and including the Arnold executors' deed. The question of title between the State, which was preferred by the State Court, and Appellants, who are citizens of the United States and entitled to the protection of the Fourteenth Amendment, depends upon the constitutional validity of the judicial proceedings by which the executors' deed was given effect, by which the involuntary conveyance from Appellants was consummated, and by which, according to the State Court, title to the gas in question was taken away.

The details concerning these judicial proceedings and the Act in question under which they were conducted are discussed in Appellants' "Jurisdictional Statement" heretofore filed and will not be repeated here.

At page 6 of Appellee's "Motion to Dismiss" it is stated:

> "The Appellant has misconstrued the import of the decision of the Supreme Court of Pennsylvania. The Supreme Court of Pennsylvania has not misconstrued,

overruled or ignored the *Act of March 29, 1832, P. L. 190, Section 32, Section 33*, which requires that the Executors exhibit to the Court a full and correct statement of all the deceased's realty."

Appellant does not contend that the Supreme Court of Pennsylvania has misconstrued, overruled or ignored the Act in question. Appellant's position is that, as construed to empower a Court to authorize and approve the sale of something not before it, the Act is unconstitutional.

The Supreme Court of Pennsylvania held that since the Executors of the Estate of N. T. Arnold prefaced the description of the property to be sold with language out of Section 33 of the Act of 1832 ("a full and correct statement of all of the real estate • • • which has come to the knowledge of his Executors"), the intention of the Executors was to sell all real estate including natural gas under the tracts of land in question, in spite of the fact that the particular descriptions of the three parcels in question were prefaced with the words "Surface only" while the descriptions of other parcels were prefaced with such phrases as, "All the coal, coal oil, fire clay and other minerals of every kind and character, in, upon and under • • •", "All the minerals, coal, fire clay, iron ore, oil, *gas* and other kinds whatsoever, • • •, in, upon and under • • •", "The undivided two-fifths interest in all the coal, coal oil, fire clay, and other minerals of every kind and character, in, upon and under • • •", "The undivided three-fourths of all coal underlying that certain • • •", "All that certain lot or piece of land • • •", and "All the interest of deceased in • • •".

Assuming *arguendo*, that the Executors intended to sell all real estate of the decedent which had come to their knowledge and was described and all of the real estate of

the decedent which had *not* come to their knowledge and was *not* described, and that the Orphans' Court intended to authorize and approve the sale of all real estate owned by decedent, whether described or not, and that the Orphans' Court was empowered to authorize and approve such a sale by the Act in question, the Federal question of whether such an involuntary sale deprived Appellants of property without due process of law remains unanswered, except by an Order of the Supreme Court of Pennsylvania refusing Appellants' Petition For Reargument without an Opinion.

It is respectfully submitted that this Federal question is substantial and that a great injustice will be permitted to stand unless the Federal question is reviewed on its merits by your Honorable Court.

The Judgment of The Court Below Does Not Rest On An Adequate Non-Federal Basis

Appellee takes the position that the decision of the Supreme Court of Pennsylvania rests upon a quitclaim deed separate and apart from the executors' deed.

The Supreme Court of Pennsylvania did not recite the quitclaim deed as a separate reason for its decision. The quitclaim deed was recognized by the Court as being a correctional deed and cumulative only. It was not a separate reason for the Court's decision.

The Supreme Court of Pennsylvania recognized that the expressed purpose of the quitclaim deed was to correct certain portions of the executors' deed. In fact this was stated by the Court in a sentence partly quoted on page 7 of Appellee's, "Motion To Dismiss Appeal". The per-

tinent part of the sentence was omitted by counsel for Appellee without any indication that the quotation was incomplete. It reads as follows:

> "While the expressed purpose of the *Penfield Quitclaim* Deed was to correct certain portions of the *Arnold Executors'* Deed, * * *"

The quitclaim deed was expressly for correctional purposes and correctional purposes only. The decision of the Supreme Court of Pennsylvania could not and did not rest solely on the quitclaim deed without the executors' deed. On the contrary, the Supreme Court of Pennsylvania expressly referred to the quitclaim deed only as one of the "successive conveyances" by which Penfield (one of the State's predecessors in title) acquired title.

Consequently, it is respectfully submitted that the decision cannot be supported without determination of the Federal questions.

Conclusion

It is respectfully submitted that the constitutional issues should be heard on the merits.

WILLIAM I. CROSBY,
Attorney for Appellants.